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Letter dated 4 September 2018 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the General Assembly

I am writing to you regarding the invitation of the Permanent Missions of Qatar and Liechtenstein to hold a "side event" on 27 September 2018, in the margins of the seventy-third session of the General Assembly, entitled "Ensuring justice for Syria: the need for accountability to achieve sustainable peace in Syria and the role of the International, Impartial and Independent Mechanism in the process". Allow me to share with you some facts concerning the continuing destructive actions of these two Member States, relating to the promotion of the so-called "International, Impartial and Independent Mechanism", despite the fact that its establishment constituted a flagrant violation of the Charter of the United Nations:

(a) Firstly, I would like to reaffirm that the evaluation I make in this letter does not constitute recognition of the so-called "International, Impartial and Independent Mechanism" nor acceptance of any of its actions or mandates. A significant number of Member States share the Syrian Government's position of not recognizing this mechanism and even refusing to deal with it or to recognize any of its mandates. My Government and the Governments of those Member States have previously informed the Secretary-General of the United Nations of these positions in many relevant letters;

(b) The Syrian Government has demonstrated that the non-consensual General Assembly resolution 71/248, which led to the establishment of this "International, Impartial and Independent Mechanism", constituted a breach of Article 12 of the Charter, which reads: "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests". It is well known, in the Syrian case, that the Security Council is still fully engaged in its responsibilities and mandates, and the General Assembly therefore has no mandate to take any action in this case;

(c) The other serious breach is related to the fact that the General Assembly did not originally have the mandate to establish such a mechanism, since that mandate was vested exclusively in the Security Council, in accordance with the provisions and principles of the Charter. Consequently, General Assembly resolution 71/248 was a

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grave legal precedent in the adoption of an abnormal practice within the framework of the United Nations. Let us remember that, since the establishment of the United Nations, the General Assembly had never established such a mechanism;

(d) The so-called "International, Impartial and Independent Mechanism" has been granted a wide range of powers under resolution 71/248, which is the prerogative of the Office of the General Prosecutor as the national judicial organ of each State. Originally, the Charter did not confer upon the General Assembly any mandate or jurisdiction relating to prosecutions, criminal investigations or the support of a criminal investigation. On this legal basis, the General Assembly does not have the power to create an organ with powers it does not already have, nor does it have the inherent authority to establish such a body. I invite you, Excellency, to take a deep look at the provisions of Articles 10, 11, 12 and 22 of the Charter, which unequivocally define the mandates of the General Assembly;

(e) It is well known that the basic legal rule governing the provision of legal technical assistance by the United Nations to any Member State is the existence of a request by the concerned State. In the event of the establishment of this illegal "International, Impartial and Independent Mechanism", there was no request submitted by the Government of the Syrian Arab Republic for such assistance. On the contrary, the establishment of this "International, Impartial and Independent Mechanism" was carried out through an exclusionary and non-transparent process led by the Permanent Missions of Qatar and Liechtenstein, which have already taken an unbalanced and dishonest attitude towards what is happening in my country, to the point of supporting and financing terrorism and tolerating its supporters;

(f) Needless to say, the Governments of countries that are sponsoring, financing and promoting this illegal mechanism and seeking to provide it with fabricated evidence and false witnesses are the same Governments that are obstructing the political solution in Syria and that have been supporting terrorism in it from day one. Moreover, some of these countries' banking institutions are carrying out money-laundering operations, originating from Qatari gas and oil deals and being used to finance terrorism and arms deals for terrorist groups;

(g) Based on the foregoing, the non-consensual of the General Assembly resolution 71/248 has again breached the Charter of the United Nations, in particular Article 2. These breaches constitute a serious violation of the principle of the sovereign equality of all States Members of the Organization and of the principle of non-interference in their internal affairs, as provided for in Article 2 of the Charter;

(h) These serious legal breaches constitute a clear violation of the principles and provisions of the Charter. As a consequence, they lead to the following conclusions:

(i) The so-called "International, Impartial and Independent Mechanism" cannot be considered as a subsidiary body established by the General Assembly. Consequently, no decisions can be taken by the Secretary-General of the United Nations to appoint a Chair or Vice-Chair of this "International, Impartial and Independent Mechanism", and no "secretariat" can be allocated to it;

(ii) This "International, Impartial and Independent Mechanism" cannot be granted any legal status;

(iii) The so-called "International, Impartial and Independent Mechanism" cannot have the capacity to conclude agreements with Member States and other entities;

(iv) The United Nations may not accept voluntary contributions or budget allocations to support the establishment and functioning of such a mechanism;

(v) Based on all of the above, any information or evidence collected, consolidated, preserved and analysed by such a "mechanism" will be ineligible for future criminal proceedings, bearing in mind that its establishment was a highly politicized act without any legal dimension;

(i) Allow me to remind you that the situation in the Syrian Arab Republic is now at a delicate stage. The political process under the auspices of the United Nations is moving forward, but with caution and fragility, because of the insistence of some Governments that have supported chaos and terrorism in Syria on interfering in Syrian internal affairs and placing more pressure on the Syrian Government and its allies in their war on global terrorism as represented by the threats of "Daesh", "Al-Qaeda", "Al-Nusrah Front" and other terrorist groups affiliated with them;

(j) It has been the duty of the United Nations to preserve its neutrality and credibility as a facilitator of the political process in Syria. Unfortunately, it has chosen to be subject to political and financial pressure and the polarization practices of some Member States, especially those Governments that have decided to support and promote the so-called "International, Impartial and Independent Mechanism" under the pretext of achieving justice in Syria. These Governments openly declare today that they will hinder the return of Syrian refugees and displaced persons to their homes and will prevent funding for reconstruction in Syria until their own political agendas are achieved in Syria.

In conclusion, I assure you that the Government of the Syrian Arab Republic has the full capability, with its legal and judicial institutions, to achieve justice and accountability without external and destructive interference. In my capacity as Permanent Representative of the Syrian Arab Republic, it is my duty to draw your attention to the grave legal and political implications of the tendentious attempts to promote that mechanism. Otherwise, it would be a dangerous legal precedent that has manipulated international law and its principles, until it becomes a model that could be applied in other countries.

It would be highly appreciated if the present letter could be circulated as a document of the General Assembly, under agenda item 34 (a).

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative